FILE COPY

IN THE

Supreme Court of the United States

October Term, 1935.

No. 40

UNITED STATES OF AMERICA, *Petitioner*,

v.

WILLIAM M. BUTLER, *et al., Receivers of Hoosac Mills Corporation.*

BRIEF AMICI CURIAE

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BRIEF AMICI CURIAE

INTRODUCTORY.

The purpose of this brief is two-fold:

A. To demonstrate the extent to which Congress, in the Agricultural Adjustment Act, delegated its powers to the Secretary of Agriculture by showing the powers exercised and the *manner* in which they were exercised.

B. To question the argument advanced in the Government's brief (pp. 179 et seq.) that the Agricultural Adjustment Act was "soundly" designed to promote the general welfare.

A.

THE POWERS DELEGATED.

The Government, in its brief, argues that the Agricultural Adjustment Act is "not invalid because of improper

delegation of legislative power." The brief is replete with expressions to the effect that the imposition, adjustment, and termination of the processing taxes "is defined with detailed exactness by Congress" and "requires the simplest of mathematical computations from figures designated by Congress."[1] Believing that upon this question "a page of history is worth a volume of logic,"[2] it is our purpose to show that Congress delegated the power to the Secretary of Agriculture to decide *whether to tax any commodity, when to tax it, at what rate, and for how long.*

It is submitted that in determining the grave constitutional questions in this case, the Court should not be narrowly confined to an examination of the powers exercised in placing a tax on the processing of cotton.[3] The validity of the Act of Congress must be judged by the powers delegated. Their scope can be demonstrated in this instance by examination of the actions of the Secretary in connection with all the basic agricultural commodities.[4]

The taxes here involved all accrued prior to the amendments of August, 1935. Our discussion is, therefore, confined to the Act as it existed before such amendments.[5]

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[1] Brief for the Government, pp. 49, 50. See also pp. 53, 55, 56, 59, 61, 64, 66, 71, 72, 73, 77, 106.

[2] Mr. Justice Holmes in *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349.

[3] The Government in its brief (p. 65, note 25) refers to commodities other than cotton in support of its arguments.

[4] *Bordens Co.* v. *Baldwin*, 293 U. S. 194.

[5] It is not the purpose of this brief to discuss the extent or effect of the recent amendment to the Agricultural Adjustment Act, purporting to legalize and ratify the taxes here involved. This has already been done by briefs on file with the Court. We suggest, however, that since the Government resorts to the law of agency as a basis for supporting its argument of ratification, that law should be further examined.

An agent, in order to ratify the acts of a sub-agent, must

I. The Power Delegated to the Secretary:— To Initiate the Tax.

(a) *Statutory Provisions.*

"Sec. 9. (a) * * * *When the Secretary of Agriculture determines* that rental or benefit payments are to be made with respect to any basic agricultural commodity, *he* shall proclaim such determination, *and* a processing tax shall

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have the power to appoint a sub-agent or the power to ratify a sub-agent's acts. (Restatement of the Law of Agency, § 93, pp. 232-234.) Conversely:

> "As a general rule, an agent cannot ratify an unauthorized act or contract performed or entered into by himself so as to make his principal liable thereon; *nor can an agent ratify an unauthorized act or contract performed or entered into by a third person on behalf of his principal.*" (Italics supplied.) 2 C. J. 473, § 90.

Congress can exercise only such authority as is delegated to it by the people of the United States. Except as it may be authorized to do so, Congress cannot delegate its legislative power to others. Under the principles of agency, Congress, acting as agent for the people of the United States, may not ratify either its own unauthorized act or an unauthorized act performed by a third party (the Secretary of Agriculture) on behalf of its principal (the people). *Ironwood Stove Co.* v. *Harrison,* 75 Mich. 197; 42 N. W. 808; *Trudo* v. *Anderson,* 10 Mich. 357, 81 Am. Dec. 795; *O'Connor* v. *Arnold,* 53 Ind. 203; *Citizens Nat. Bank of Cameron* v. *Good Roads Gravel Co.* (Tex. Civ. App.) 236 S. W. 153; *State Exchange Bank of New Boston* v. *Simms* (Tex. Civ. App.), 266 S. W. 1111; *Horrabin* v. *McCallum,* 19 Ia. 441, 182 N. W. 646; *Sturm* v. *Continental Oil Co.,* 131 Kan. 518, 292 Pac. 774; *Britt* v. *Gordon,* 132 Ia. 431, 108 N. W. 319; *Driscoll* v. *Modern Brotherhood of America,* 77 Neb. 282, 109 N. W. 158.

The cases of *United States* v. *Heinszen & Co.,* 206 U. S. 370, *Rafferty* v. *Smith, Bell & Co.,* 257 U. S. 226, and *Tiaco* v. *Forbes,* 228 U. S. 549, are in accord with this legal principle, for in those cases it was, in effect, decided that Congress had the power to delegate its legislative authority when dealing

be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; * * *." (Italics supplied.)

(b) *Acts of Secretary thereunder.*

By proclamation the Secretary determined that rental or benefit payments were to be made with respect to the following commodities effective on the dates specified:

Basic Commodities Subject to Processing tax	Date of Proclamation	Effective date of tax
Cotton	July 14, 1933	Aug. 1, 1933
Field Corn	Oct. 12, 1933	Nov. 5, 1933
Hogs	Aug. 17, 1933	Nov. 5, 1933
Peanuts	Aug. 23, 1934	Oct. 1, 1934
Rice	Mar. 26, 1935	April 1, 1935 [6]
Sugar	May 9, 1934	June 8, 1934 [7]
Tobacco	Aug. 10, 1933 [8] Sept. 5, 1933 [9]	Oct. 1, 1933
Wheat	June 20, 1933	July 9, 1933
Rye	July 3, 1935	Sept. 1, 1935 [1]

[6] Fixed by the Amendatory Act of March 18, 1935, Public No. 20, 74th Congress. The marketing year, also prescribed in this Amendatory Act, commences August 1, 1935.

[7] Fixed by the Amendatory Act of May 9, 1934, Public No. 213, 73rd Congress. The marketing year also prescribed in this Amendatory Act is the calendar year.

[8] Cigar leaf tobacco.

[9] Maryland, Burley, flue-cured, fire-cured, dark air-cured tobacco.

[1] Rye was added to the list of basic agricultural commodities

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with the possessions of the United States. They also emphasize the rule that where Congress does not have the power to delegate its authority it cannot ratify the acts of the sub-agent. No other interpretation can properly be given the language of the *Heinszen & Co.* case, supra, where the Court said:

> "Congress possessed the power to have authorized their imposition *in the mode in which they were enforced.*" (Italics supplied.)

The Secretary has also determined that the following commodities compete with basic agricultural commodities and are, therefore, subject to a compensating tax:

Competing Commodities Subject to Processing Tax	Date of Proclamation	Effective date of Tax
Jute	Dec. 1, 1933	Dec. 1, 1933
Paper	Dec. 1, 1933	Dec. 1, 1933
Paper tape	Nov. 1, 1935	Nov. 1, 1935

The Secretary has issued no proclamation respecting the following commodities, described in the Act as basic agricultural commodities: flax, barley, grain sorghums, cattle, milk and its products, and potatoes. However, the parity price and the average farm price of each of the above commodities, as shown by the statistics first available after the date on which the commodity was first named in the Act, were as follows: [2]

Date of Act	Basic Commodity	Date of First Available Statistics	Parity Price	Average Farm Price
4/ 7/34	Flax (per bu.) ¢	6/15/34	206.3	167.8
4/ 7/34	Barley (per bu.) ¢	6/15/34	75.5	50.9
4/ 7/34	Grain sorghums	No data	No data	No data
4/ 7/34	Cattle (per 100 lb.) $	6/15/34	6.36	4.00
5/12/33	Milk and its products (wholesale per 100 lb.) $	6/15/33	1.84	1.21
8/24/35	Potatoes (per bushel) ¢	9/15/35	48.4	89.0

[2] The proof in this suit shows the formula adopted by the Secre-

by the Amendatory Act of April 7, 1934. (Public No. 142, 73rd Congress), but no tax was imposed thereunder until one year later. The available statistical data of June 15, 1934 (the data the Secretary would have used to impose a tax on September 1, 1934), shows a parity price for rye of 87.8¢ per bushel, and an average farm price of 58.2¢ per bushel. What standard is in the Act to determine that the tax should not be imposed for the 1934 marketing year but should be imposed for the 1935 marketing year?

By the statute, Congress did not levy the tax but authorized the Secretary to levy or refrain from levying it. He has exercised that power by taxing some commodities while not taxing others which were selling below parity.

Not only is this situation true with respect to basic agricultural commodities, but also with respect to competing commodities. Certain paper and jute products have been taxed as competing with cotton. However, wool, rayon, linen, and silk remained untaxed, although every housewife commonly accepts them as competing with cotton. The same relationship exists between hogs, cattle and sheep, although only hogs have been taxed.

The Government argues (Brief, pp. 71-84) that the Secretary is given no discretion as to imposing a processing tax, because once he finds that a reduction of domestic production will result in a raising of farm prices action by him is mandatory. This, the Government argues, "requires simply the use of facts currently collected by official agencies and the use of analyses and forecasts as to the price, supply and demand outlook made with routine regularity by the Department since 1923."[3]

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[3] "The administration obtained the support of large majorities before putting into effect any of the acreage adjustments or marketing agreements; *when farm opinion failed to unite on a proposed dairy program, the administration withdrew it.*" Yearbook of Agriculture, 1935, U. S. Department of Agriculture, p. 8. (Italics supplied.)

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tary in determining the parity price, the average current farm price, and the difference. We have used the same formula in our computations above. In the case of milk, named in the original act, we have used data from the data sheet introduced in evidence in this case. In the case of other commodities (added by amendment of the act) the data employed is that set out in similar data sheets issued by the Department of Agriculture for subsequent months.

Any action by the Secretary, however, is admittedly made dependent on domestic supplies, world supplies and producer sentiment. (Brief, pp. 72-76.) Obviously, the Government should have added to this list of factors involved such items as drought, flood, insects, plant diseases, war, purchasing power, monetary policy, and dozens of other items.[4] Patently, Congress set up no standards for the Secretary to follow, but gave him unlimited power of discretion in determining whether or not a tax should be imposed.

"That Congress cannot delegate legislative power to the President is universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution." *Panama Refining Co.* v. *Ryan*, 55 S. Ct. 241. Can there be any doubt that the power to tax ("the power to destroy"[5]) is a Legislative power?[6]

The taxing power is so vital, so potentially destructive, so forceful, that it should be exercised only by Congress. One cannot plead that his property is taken for a public use without compensation if it is taken by the process of a proper tax.[7] Consequently, the courts should apply

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[4] "Unfortunately, weather conditions in both hemispheres upset all calculations last year, and to a still greater extent this year." Yearbook of Agriculture, 1935, U. S. Department of Agriculture, p. 42.

[5] *McCulloch* v. *Maryland*, 4 Wheat. 316.

[6] The power to tax was regarded as of such great importance that the Constitution provided that all bills for raising revenue should originate in the House of Representatives—the body elected by the people—rather than in the Senate, whose members were then chosen by the State legislatures.

[7] *Magnano* v. *Hamilton*, 292 U. S. 40:

> "Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power conferred upon Congress by

more strictly the rule against delegation of legislative power when applying it to taxation than when dealing with other powers vested in Congress, which are subject to the Fifth Amendment.

II. The Power Delegated to the Secretary:—
To Determine the Commodity Taxed.

(a) *Statutory Provisions.*

"Sec. 11. As used in this title, the term 'basic agricultural commodity' means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, tobacco, sugar beets and sugarcane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; * * *."

(b) *Acts of Secretary thereunder.*

The Act specifies the basic agricultural commodities and provides for "any regional or market classification, type, or grade thereof". The Secretary provided for eight different market classifications of tobacco and subdivided each market classification into types or grades. The result is that there are thirty-six tax rates applicable to the processing of tobacco.[8]

Proceeding under the same Act, the Secretary imposed only one rate of tax for cotton and only one for wheat.

[8] T. D. 4530—March 8, 1935. In addition, special rates are fixed for special uses of the various classifications and grades.

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the Constitution * * *. That clause is applicable to a taxing statute such as the one here assailed only if the Act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property."

In the case of cotton, the rate is 4.2 cents per pound, regardless of market classifications, types or grades thereof. The fact is that there are *481* market classifications, types or grades of cotton.[9] On April 23, 1934, the prices of these grades of cotton ranged from 9.15 cents per pound to 18.70 cents per pound.[9] It is immediately apparent that a tax rate of 4.2 cents per pound cannot apply with equal propriety to all types of cotton.[1]

A similar situation exists with respect to wheat. The Secretary has imposed a tax rate of 30 cents per bushel of 60 pounds. Such procedure overlooks the fact that there are at least *sixteen* classifications of wheat and in addition thereto there are numerous special sub-classifications and grades.[2]

The Government argued in the lower court that the *six* market classifications of tobacco are essentially different commodities, whereas the various grades of cotton are essentially only one commodity. This argument inherently establishes an unconstitutional delegation of powers. Where in the Act is there any standard to advise the Secretary

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[9] House Document 405, 73rd Congress, 2nd Session, p. 4 "Cotton Classing and Market News Service for Farmers."

[1] See discussion of Act on floor of the Senate by Senator Smith (Chairman of Committee on Agriculture and Forestry), where he explained that different rates of tax would be applied to the various staple lengths of cotton. Cong. Rec., Vol. 77, Part 2, p. 1389.

[2] Handbook of Official Grain Standards of the U. S., published by the Department of Agriculture (1934), U. S. G. S. A. Form No. 90; Amended March 28, 1935:

> "Although wheat is often considered as a homogeneous commodity, it is in fact comprised of at least five distinct classes." *Regional Problems in Agricultural Adjustment*, U. S. Department of Agriculture, Agricultural Adjustment Administration, March, 1935, p. 54.

of Agriculture when he should subdivide a basic commodity into grades or types or when he should classify them together and subject them to one rate of tax?

This is only one of several illustrations of the powers delegated to the Secretary; powers which greatly exceed the mere determination of facts or the "filling up of details."[3]

Further illustrating the power of the Secretary of Agriculture to determine the commodity taxed, we again refer to "cotton". At no place in the Act is there any reference to "lint cotton" or "cottonseed". One would suppose that, in using the term "cotton", Congress referred to the farm product which is later separated by ginning into "lint cotton" and "cottonseed". Especially does this become true when the stated purpose of the Act is considered, i.e., to reestablish farm purchasing power. The Department of Agriculture's statistics show that in October, 1935, "lint cotton" was selling for 70% of parity (new basis), whereas during the same month "cottonseed" was selling at 115% of parity (new basis).[4] The Secretary assumes that the Act authorizes him to tax "lint cotton" although the purpose of the Act is to raise the farm purchasing power of the cotton grower to parity.[5] Conceivably, parity might

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[3] Chief Justice Marshall in *Wagman* v. *Southard*, 10 Wheat., 1, 43.

[4] 1400 lbs. of farm cotton will average 500 lbs. of lint cotton and 900 lbs. of cottonseed.

[5] Section 2 of the Act as originally enacted declared the policy to be to re-establish farm prices "at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period * * *." The phrase "parity price" has been generally adopted as describing this desired level. No method of determining this level was outlined in the statute, except that the Secretary was to use statistics available in the Department of Agriculture. Perhaps Congress

be reached for "cotton" because of increased prices for cottonseed, while "lint cotton" remained below parity.

Nowhere in the Act is the standard given under which the Secretary of Agriculture distinguishes between "lint cotton" and "cottonseed", both products of the cotton plant.[6]

III. The Power Delegated to the Secretary:— To Fix the Tax Rate.

(a) *Statutory Provisions.*

Section 9 (a) provides in part:

"* * * The rate of tax shall conform to the requirements of subsection (b). Such rate shall be deter-

[6] In the case of cotton, no allowance is made by the Secretary for the dirt content of the cotton. In effect, the processors are paying 4.2 cents processing tax on the dirt in a bale of cotton. With respect to peanuts, however, an allowance is made for dirt so that a processing tax is not paid on this foreign matter. [T. D. 4489, October 26, 1934.] With respect to cigar leaf tobacco, we are advised by the Bureau of Internal Revenue that 7 per cent adjustment in weight is allowed to the processor on account of the moisture content, but no similar allowance is made for the moisture content of cotton. See also the proclamation of the Secretary of Agriculture dated February 1, 1934, adjusting the tax rate with respect to field corn to a 15½% moisture basis.

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was not satisfied with the manner in which the Secretary arrived at parity prices; in any event, in the amendments of August 24, 1935, it added to the language quoted above, "and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period."

mined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements * * *."

Section 9 (b) provides in part:

"The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; * * *."

Section 9 (c) provides:

"For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture."

(b) *Acts of Secretary thereunder.*

(1) *In fixing original rate of tax*

It is contended by the United States that the computation of the tax rate involves the exercise of no discretion by the Secretary but only the use of "the simplest of mathematical computations".[7] Examination of the facts, however, shows that this is erroneous, and that Congress did not in the Act lay down sufficient standards or formulae to permit the tax rate to be determined without the use of almost unlimited discretion by the Secretary.

In his proclamations the Secretary fixed the rate of tax and the effective dates. These proclamations were issued in advance of the effective dates of the several taxes. The statistical data on which the rates were based was in-

[7] Brief, p. 50.

variably as of some date *prior* to the proclamation, varying from three weeks to thirteen months. Since price changes were constantly taking place, the rate of tax for any commodity depended, among other things, upon the date which the Secretary selected for his proclamation and the periods covered by the statistical data selected by him. The following table graphically illustrates the discretion exercised by the Secretary in thus fixing the tax rates:

Commodity	Effective Date of Tax	Date of Proclamation	Computations of Secretary: Date of statistical data used	Rate Fixed	Rate of tax computed upon data as of the effective date [8]
COTTON (¢ per lb.)	Aug. 1, 1933	July 14, 1933	June 15, 1933	4.2	4.1
WHEAT (¢ per bushel)	July 9, 1933	June 20, 1933	June 15, 1933	30.	12.6
CORN (¢ per bushel)	Nov. 5, 1933	Oct. 21, 1933	Sept. 15, 1933	5.0[9]	34.9
HOGS [1] ($ per cwt.)	Nov. 5, 1933	Oct. 18, 1933	Sept. 15, 1933	.50[2]	4.57
	Dec. 1, 1933	Oct. 18, 1933	Sept. 15, 1933	1.00[2]	5.18
	Jan. 1, 1934	Oct. 18, 1933	Sept. 15, 1933	1.50[2]	5.39
	Feb. 1, 1934	Oct. 18, 1933	Sept. 15, 1933	2.00[2]	4.98
PEANUTS (¢ per lb.)	Oct. 1, 1934	Sept. 24, 1934	not known	1.00[9]	2.7
TOBACCO (¢ per lb.)	Oct. 1, 1933	Sept. 14, 1933			
Cigar leaf			Dec. 1932—Apr. 1933	3.0[9]	note [3]
Maryland			Sept. 1932—Aug. 1933	1.7	1.5
Burley			Dec. 1932—Apr. 1933	2.0	note [3]
Flue-cured			Aug. 1932—Mar. 1933	4.2	5.2
Fire-cured			Nov. 1932—May 1933	2.9	note [3]
Air-cured			Dec. 1932—April 1933	3.3	note [3]

[8] In these computations, the theory expounded by the United States in this case for the computation of the tax has been used.

[9] The rate fixed was stated to be less than parity upon ground that tax at parity would result in accumulations of surplus stocks.

[1] On December 21, 1933, the Secretary amended his regulations to provide that effective January 1, 1934 the rate would be $1.50 per hundred weight; effective March 1, 1934, the rate should be $2.25 per hundred weight.

[2] A progressive scale of tax was fixed. The scale has been changed several times. See Hog Regulations, Series 1; Series 1, Supplement 1; Series 1, Revision 1; Series 1, Supplement 2; Series 1, Supplement 3; Series 1, Number 1; Treasury Decision 4406; Treasury Decision 4425; Treasury Decision 4518.

[3] No data available as of effective date. In selecting a marketing year beginning October 1, the Secretary appears to have acted arbitrarily. See "American Tobacco Types, Uses and Markets," U. S. Dept. Agri. Circular, No. 249, p. 83.

The Court will note from the following:

(a) That due to the substantial increase in the farm price of wheat between June 15, 1933 (the date of the statistical data) and July 9, 1933; (the effective date of the tax) the rate of tax exceeded the difference between parity and average farm price on the effective date by more than 100 per cent.

(b) That in some instances data as of a particular date was used, while in other instances data covering a period of time was used. In the case of tobacco (except Maryland tobacco), the marketing period consists of only a few months and during the balance of the year there is no farmers' market.[4] In computing the tax rate on types of tobacco, the Secretary did not use the farm price as of a particular date, as was done with other commodities, but instead used the price over a period of time. In the case of Maryland tobacco, farm prices for the year, September, 1932, through August, 1933, were used to fix a tax effective October 1, 1933, while in the case of flue-cured tobacco, farm prices for the period from August, 1932, through March, 1933, were used to fix a tax effective October 1, 1933. In other words, the current market was disregarded and sales of a previous year used.

(2) *In determining the marketing year*

The discussion above illustrates the power of the Secretary of Agriculture to fix the original rates of tax. His power to determine the marketing year should also be considered, for obviously the fixing of the marketing year affects the statistical data used to determine the tax rates.

The Government in its brief states: (p. 64)

"It cannot seriously be contended that the Secretary

[4] "American Tobacco Types, Uses and Markets," U. S. Dept. of Agriculture, Circular No. 249, p. 83.

of Agriculture may initiate a processing tax upon any particular day in the year which he may choose."

Our reply, however, is that the Secretary has used the power to ascertain and prescribe the marketing year of various commodities in such a manner as to initiate the tax upon such days as he chose.

The Government's brief states that "each particular commodity has a well-defined annual period within which its marketing takes place." (p. 64) As authority, it cites the Yearbook of Agriculture, 1932, of the United States Department of Agriculture. A comparison of marketing years proclaimed by the Secretary, with those disclosed by this authority shows the following:

"MARKETING" YEARS OF BASIC AGRICULTURAL COMMODITIES

Commodity	Marketing Year under AAA	Yearbook of Agriculture for 1932		"Other" Reference Years"	Pages
		Crop Year	Marketing Year		
Cotton	Aug. 1	Aug. 1		Aug. 1	658–670
Field Corn	Nov. 5	Oct. 1		Nov. 1	615–619
Hogs	Nov. 5			Oct. 1	788–789
Peanuts	Oct. 1	Nov. 1		Sept. 1	763–765
Rice [5]	April 1	.....	.....	.....	
Sugar [6]	Jan. 1	.....	.....	.....	
Tobacco	Oct. 1			Dec. 1	690
Cigar leaf				Oct. 1	692
Maryland				Oct. 1	691
Burley				Oct. 1	691
Flue cured				July 1	691, 694
Fire cured				Oct. 1	690
Dark air cured				Oct. 1	691
Wheat	July 9	July 1		July 1	587–598
Rye	Sept. 1	July 1			606–607
Flax		July 1 Sept. 1			641–646
Barley		Aug. 1		July 1	636–639
Grain Sorghums		Nov. 1			657
Cattle				Jan. 1	775–783
Milk & its products				Jan. 1	829–844
Potatoes [7]	Dec. 1	.....	.....	.....	

[5] Fixed by Amendatory Act March 18, 1935, Public Laws No. 20, 74th Congress.

[6] Fixed by Amendatory Act May 9, 1934, Public Laws No. 213, 73rd Congress.

[7] Fixed by Amendatory Act Aug. 24, 1935, Public Laws No. 320, 74th Congress.

The Court will note from the foregoing:

(1) The Yearbook of Agriculture does not mention "marketing years" for any basic agricultural commodities. The citation of that book as authority (Government brief, p. 65) can only mean that the Secretary of Agriculture has decided that "crop year" and "marketing year" are synonymous.[8] If Congress had desired to use the "crop year" as the basic date for the imposition of the processing tax they could have used that term in the statute. The fact that the Secretary resorts to the "crop year" as a synonym for "marketing year" clearly establishes that there was not a sufficient standard used in the Act to guide him. Of necessity the Secretary has determined so-called "marketing years" according to the dictates of his own reasoning.

(2) Even the argument that Congress intended that "crop year" and "marketing year" be synonomous must fail, for the above chart discloses the following:[9]

Wheat:

Year per Yearbook, July 1 (pp. 587, et seq).
Year per Secretary, July 9.

Field Corn:

Year per Yearbook, October 1 (Table 52).
November 1 (Tables 53 and 56) (pp. 615, 616).
Year per Secretary, November 5.

Hogs:

Year per Yearbook, October 1 (p. 788).
Year per Secretary, November 5.

Rye:

Year per Yearbook, July 1 (pp. 605-606).
Year per Secretary, September 1.

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[8] Patently "crop year" and "marketing year" are not synonomous in the case of tobacco. The tobacco must be dried before it is marketed. Cf. year dates shown for tobacco in the above chart with the "marketing year" data shown in "American Tobacco Types, Uses and Markets," p. 83.

[9] In the case of tobacco, the Secretary "ascertained and pre-

It is submitted that the actions of the Secretary of Agriculture are consistent only with an interpretation of the statute which gives him discretionary power to fix the marketing year and are inconsistent with the interpretation urged in the Government's brief that "the beginning of the marketing year" for each commodity is *an established date* and that the sole duty of the Secretary was to ascertain that date from available data in the Department of Agriculture.

(3) *In adjusting rate of tax.*

The Act provides that the Secretary shall adjust the rate of tax at such times as he finds necessary to effect the declared policy; a blanket discretion vested in him without any limitations other than his own judgment as to necessity.

Without making any findings of fact, the Secretary issued a proclamation on September 27, 1934, which provided that as of October 1, 1934 the tax on Maryland and Burley tobacco should be changed to reflect the difference, at that time, between the parity price and the average farm price. In other words, in the case of these

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scribed" the marketing year for all types as beginning October 1. In "American Tobacco Types, Uses and Markets," published by the Department of Agriculture, the marketing period for the various types is given as beginning on the dates following (p. 83):

Type	*Date*
Cigar Leaf	
Maryland	July
Burley	December
Flue-cured	August
Fire-cured	November
Air-cured	November

two types of tobacco, the Secretary adjusted the tax at the end of the first marketing year to reflect the changes which had taken place in the price structure. However, he made no such change in any other type of tobacco or in any other basic commodity, although, as shown in the following table, such changes would have been justified.

(1)	(2)	(3)	(4)	(5)
Commodity	Date of Beginning of New Marketing Year	Rate of Tax Computed Upon Data as of this Date	Actual Rate of Tax as of this date	Difference (3) from (4)
Cotton (¢ per pound)	8/1/34	2.7	4.2	+1.5
Corn (¢ per pound)	11/5/34	4.9	5.0	+ .1
Hogs ($ per cwt.)	11/5/34	4.00	2.25	−1.75
Wheat (¢ per bushel)	7/9/34	29.0	30.0	+1.0
Tobacco (flue-cured) (¢ per pound)	10/1/34	0.	4.2	+4.2

The most startling fact is that in the same proclamation in which the Secretary redetermined the tax rate upon Maryland and Burley tobacco, he continued the old rate upon flue-cured tobacco, although the current farm price exceeded parity.

While the Secretary adjusted tobacco rates at the end of the first marketing year, and made no such adjustment in the case of other commodities, there is no standard or formula other than his own judgment which prescribes how often the changes are to be made. We list below the difference between parity and average farm price of cotton as compiled by the Secretary at various dates and the tax rate continued in force by him:

	(1) Parity Price	(2) Average farm Price	(3) Difference between parity and average farm price[1]	(4) Rate of Tax Imposed	(5) Difference (3) from (4)
Aug. 1, 1933	13.6	9.7	3.9	4.2	+0.3
Aug. 15, 1933	13.9	8.8	5.1	4.2	−0.9
Sept. 15, 1933	14.4	8.8	5.6	4.2	−1.4
Oct. 15, 1933	14.4	9.0	5.4	4.2	−1.2
Nov. 15, 1933	14.4	9.6	4.8	4.2	−0.6
Dec. 15, 1933	14.4	9.6	4.8	4.2	−0.6
Jan. 15, 1934	14.5	10.3	4.2	4.2	0
Feb. 15, 1934	14.8	11.7	3.1	4.2	+1.1
Mar. 15, 1934	14.9	11.7	3.2	4.2	+1.0
April 15, 1934	14.9	11.6	3.3	4.2	+0.9
May 15, 1934	15.0	11.0	4.0	4.2	+0.2
June 15, 1934	15.0	11.6	3.4	4.2	+0.8
July 15, 1934	15.1	12.3	2.8	4.2	+1.4
Aug. 1, 1934	15.3	12.7	2.6	4.2	+1.6
Aug. 15, 1934	15.5	13.1	2.4	4.2	+1.8
Sept. 15, 1934	15.6	13.1	2.5	4.2	+1.7
Oct. 15, 1934	15.6	12.5	3.1	4.2	+1.1
Nov. 15, 1934	15.6	12.3	3.3	4.2	+0.9
Dec. 15, 1934	15.6	12.4	3.2	4.2	+1.0

(4) *In reducing rate of tax to prevent accumulations.*

The Secretary is given the power to adjust the tax to prevent accumulation of surplus stocks or depression of the farm price. No other criterion is supplied to guide the Secretary in determining when and to what extent the tax shall be reduced. This power has been exercised by the Secretary to reduce the tax upon corn, hogs, peanuts and certain classifications and uses of tobacco, below a rate which represents the difference between parity and current average farm price of the commodity.

The chart set forth below shows the various actions taken by the Secretary with respect to tobacco; only one of the basic commodities named in the Act.

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[1] Adjustment for tare would increase this difference by from one-tenth to two-tenths of a cent.

Market Classification	10/1/33	8/1/34	10/1/34	2/1/35	10/1/35[3]
Cigar leaf, all kinds					
farm sales weight	3.00[2]	....	....	....	....
sweated, unstemmed	3.75[2]	....	....	....	....
sweated, stemmed	5.00[2]	....	....	....	....
Cigar leaf, No. 118 Fire-cured					
farm sales weight	....	....	....	3.00[2]	3.00[2]
sweated, unstemmed	....	....	....	3.25[2]	3.25[2]
sweated, stemmed	....	....	....	4.30[2]	4.30[2]
Cigar leaf, used in scrap chewing or smoking					
farm sales weight	....	....	....	2.00[2]	2.00[2]
sweated, unstemmed	....	....	....	2.50[2]	2.50[2]
sweated, stemmed	....	....	....	3.30[2]	3.30[2]
Cigar leaf, all others					
farm sales weight	....	....	....	3.00[2]	3.00[2]
sweated, unstemmed	....	....	....	3.75[2]	3.75[2]
sweated, stemmed	....	....	....	5.00[2]	5.00[2]

[2] Proclamation states that tax is fixed at a rate which will prevent the accumulation of surplus stocks and depression of the farm price.

[3] The proclamation of September 26, 1935, effective October 1, 1935, purports to give effect to the amendments of August 24, 1935, permitting a tax although the commodity has reached or exceeded its parity price.

Market Classification	10/1/33	8/1/34	10/1/34	2/1/35	10/1 35[5]
Maryland					
farm sales weight	1.70	....	0.00[6]	....	3.62
sweated, unstemmed	1.80	....	0.00	....	3.85
sweated, stemmed	2.40	....	0.00	....	5.20
Burley					
farm sales weight	2.00	....	6.10[6]	....	3.50
sweated, unstemmed	2.30	....	7.00	....	4.00
sweated, stemmed	3.10	....	9.50	....	5.40
Burley, used in manufacture of plug chewing tobacco and twist					
farm sales weight	....	....	4.10[4]	....	....
sweated, unstemmed	....	....	4.70[4]	....	....
sweated, stemmed	....	....	6.40[4]	....	....
Burley, used in manufacture of chewing tobacco					
farm sales weight	....	....	....	2.50[4]	2.50[4]
sweated, unstemmed	....	....	....	2.90[4]	2.90[4]
sweated, stemmed	....	....	....	3.90[4]	3.90[4]

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[4] Proclamation states that tax is fixed at a rate which will prevent the accumulation of surplus stocks and depression of the farm price.

[5] The proclamation of September 26, 1935, effective October 1, 1935, purports to give effect to the amendments of August 24, 1935, permitting a tax, although the commodity has reached or exceeded its parity price.

[6] In the case of Maryland and Burley tobacco, the Secretary on September 27, 1934, redetermined the difference between parity and average farm prices, as of October 1, 1934, and fixed new rates of tax. In the case of other classifications, there was no rede-

Market Classification	10/1/33	8/1/34	10/1/34	2/1/35	10/1/35[8]
Flue cured					
farm sales weight	4.20	....	(note 8)	....	1.89
sweated, unstemmed	4.70	....	....	....	2.13
sweated, stemmed	6.10	....	....	....	2.73
Flue cured, manufactured into plug chewing tobacco and twist					
farm sales weight	....	3.30[7]	....	....	....
sweated, unstemmed	....	3.70[7]	....	....	....
sweated, stemmed	....	4.80[7]	....	....	....
Flue cured, manufactured into chewing tobacco					
farm sales weight	....	....	....	2.00[7]	....
sweated, unstemmed	....	....	....	2.30[7]	....
sweated, stemmed	....	....	....	2.90[7]	....
Fire cured					
farm sales weight	2.9	....	(note 9)	....	2.14
sweated, unstemmed	3.2	....	....	....	2.36
sweated, stemmed	4.1	....	....	....	3.10
Fire cured, manufactured into chewing tobacco[1]		....	....	2.00	....
farm sales weight	....	....	....	2.00[7]	....
sweated, unstemmed	....	....	....	2.20[7]	....
sweated, stemmed	....	....	....	2.90[7]	....

[7] Proclamation states that tax is fixed at a rate which will prevent the accumulation of surplus stocks and depression of the farm price.

[8] The proclamation of September 26, 1935, effective October 1, 1935, purports to give effect to the amendments of August 24, 1935, permitting a tax, although the commodity has reached or exceeded its parity price.

termination of such difference or adjustment of the rate. Available data for flue cured tobacco, as of October 1, 1934, showed the average farm price to be in excess of parity.

Market Classification	10/1/33	8/1/34	10/1/34	2/1/35	10/1/35
Dark air cured					
farm sales weight	3.30	....	(note 9)	....	....
sweated, unstemmed	3.80	....	....	....	....
sweated, stemmed	5.10	....	....	....	....
Dark air cured, manufactured into chewing tobacco					
farm sales weight	....	....	....	2.00	....
sweated, unstemmed	....	....	....	2.30	....
sweated, stemmed	....	....	....	3.10	....

As shown in this chart, the Secretary fixed the rate of tax on certain types at the full rate and on other types at a reduced rate; he fixed different rates for different uses of the same type; he redetermined the rate as of October 1, 1934, upon certain types and continued the old rate upon other types.[2] By the device[3] of continuing in

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[9] In the case of Maryland and Burley tobacco, the Secretary on September 27, 1934, redetermined the difference between parity and average farm prices as of October 1, 1934, and fixed new rates of tax. In the case of other classifications, there was no redetermination of such difference or adjustment of the rate. Available data for flue cured tobacco, as of October 1, 1934, showed the average farm price to be in excess of parity.

[1] The difference between parity and current average farm price as of February 1, 1935 (January sales) was twenty-six one-hundredths (.0026) of a cent per pound.

[2] The current farm price of flue-cured tobacco as of October 1, 1934 (based on total September sales) exceeded parity, and a redetermination of the tax rate on the basis of the current farm price would have eliminated the tax. Yet the tax was continued on that type, and reduced on others by the use of a proclamation which provided only for the reductions. Under the Act, the Secretary may (1) continue the rate by inaction, even though parity has been reached; (2) redetermine the rate at any time; (3) reduce either the continued or redetermined rate; or (4) terminate the tax. By proper selection he may adjust the

[3] Tobacco regulations, Series 1, Number 2, dated January 18, 1935, and approved January 19, 1935.

effect an *October, 1933* rate upon fire-cured tobacco and then reducing that rate, as of *February 1, 1935* to prevent accumulation of surplus stocks or depression of farm prices, the Secretary effectively imposed a rate of tax which could not have been justified by a redetermination of the tax rate as of February 1, 1935. In brief, the Secretary enacted his own tax legislation.

IV. The Power Delegated to the Secretary:— To Terminate the Tax.

(a) *Statutory Provisions.*

"Sec. 11. * * * the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title can not be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof."

"Sec. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President

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rate to suit his ideas of the economics involved. For example, on October 1, 1934, he redetermined the rate on certain types of tobacco. Had he redetermined the rate on flue-cured tobacco, the tax would have been removed. So he made no redetermination with respect to that type and continued the old rate. For another type he continued the old rate but, under his power to lower the rate to prevent accumulation, fixed the tax at a rate higher than would have been justified if the rate were redetermined.

shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity."

(b) *Acts of Secretary thereunder.*

The floor stock tax on peanuts was terminated by the President of the United States by a proclamation dated September 25, 1934, although the processing tax continued. The President acted pursuant to Section 13 of the Act, but failed to make any findings of fact to substantiate his decision.

A similar situation exists with respect to the processing of peanuts into peanut oil. On September 24, 1934, the Secretary of Agriculture, acting pursuant to Section 15 (a) of the Act, suspended the imposition of this tax. No findings of fact were made to substantiate his decision.

It is thus apparent that the administrative officers can terminate, or continue, lower or raise the processing and floor stock taxes on various commodities at will. The facts demonstrate that the administrative officials do not in fact act pursuant to any standards or formulae—for the reason that no adequate standards are contained in the statute.

V. The Power Delegated to the Secretary:— To Expend the Proceeds of the Tax.

(a) *Statutory provision:*

"*Sec. 12* (a). There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of

this title. Such sum shall remain available until expended.

"To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions and production adjustments with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000: Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(b) In adition to the foregoing, the proceeds derived from all taxes imposed under this title are hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative expenses, rental and benefit payments, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out

of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(b) *Acts of Secretary thereunder*

The Act appropriates all of the amounts collected from processing taxes for rental and benefit payments to producers. Substantially all taxes collected, and other large appropriations from other sources, have been distributed to owners of farms (both absentee-landlord and dirt-farmer) to promote the "Economy of Scarcity" thesis of the present Administration.

The Government argues in numerous parts of its brief that the taxes involved in this case must be considered distinct and apart from the question of the appropriation and expenditure of the monies so exacted (pp. 90-100, 122-135). If the theory advanced by the Government is sound, it is immediately apparent that there are no Constitutional limitations on the power of the federal government. The National Recovery Act can be made constitutional merely by placing an excise tax on all business and then making benefit payments (equal to the amount of the tax) to those businesses which sign contracts as to minimum hours and wages. The same system could be used effectively to enforce the Railway Pension Act. The federal government would soon be insidiously creeping into every form of private business and into all local matters. The logical effect of the exercise of such power is that set out in the annual report of the Secretary of Agriculture for 1935 (p. 7):

> "Farmers may not produce as much of certain things as otherwise they would. Men not now in farming may not enter it unconditionally. The Bankhead Law penalizes the production of cotton above a certain quantity; and the Kerr-Smith Act applies a similar principle to tobacco. Processing taxes affect

> the conditions under which cotton, wheat, tobacco, and corn and hogs may be produced. Milk agreements help existing dairymen, at the cost of a restraint upon new competition. *These are intended consequences.*'' (Italics supplied.)

To say that the Court may not look at the use to which the processing taxes are appropriated by the very Act which imposes them, is to say that this Court must look to the shadow and may not deal with the substance of the question before it.[4]

VI. Summary.

Power has been delegated to the Secretary of Agriculture to levy the tax or refrain from taxing, to determine the commodity to be taxed, to prescribe separate rates for various classifications and varying rates for different uses of the same commodity, to change the rate of tax at any time to reflect current conditions, or to continue a rate fixed under other conditions, to reduce the tax and fix the reduced rate, and to terminate the tax upon any commodity, any classification thereof or particular use thereof. In short, the legislative power of taxation has been lodged in the Secretary and has been exercised by him without limitation other than his own judgment. The Agricultural Adjustment Act clearly provides for a ''government of men, not of laws''.

The brief of counsel for the respondent shows that as a

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[4] The government's argument would support a contention that Congress could impose taxes to subsidize members of a prevailing political party.

matter of law there has been an unconstitutional delegation of the legislative power. It is intended by the present brief to demonstrate the unlimited powers which have *in fact* been delegated to the Secretary. It is impossible to examine the inconsistent and conflicting manner in which the Secretary has exercised those powers and not reach the conclusion that the Agricultural Adjustment Act presents a flagrant example of the abandonment by Congress of its lawmaking function by transferring "that function to the President or other officer or to an administrative body." *Panama Refining Co.* v. *Ryan*, and *Amazon Petroleum Corp.* v. *Ryan*, 55 S. Ct. 241.

B.

THE EFFECT OF THE ACT.

The Decline in Exports and Increase in Imports of Agricultural Commodities.

In the course of the Government's argument, the Agricultural Adjustment Act is credited with having promoted the recovery not only of agriculture but of industry as well. (pp. 217, et seq.) It is doubtful whether such an argument has any proper place in the present litigation.

If, however, the Court is to weigh the economic effects of the Act, it should seriously consider whether this legislation has not delayed ultimate recovery and resulted in permanent injury to the country.

The Court will, it is submitted, take judicial notice of the importance to the United States of its export trade. A large share of this export trade is made up of exports

of agricultural commodities.[5] Any Act which reduces this commerce, therefore, strikes at the welfare of the American people as a whole, and seriously endangers the future prosperity of the American farmer, whatever temporary benefits it may appear to give him.

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[5] This statement is borne out by the following passage from an article entitled *Agriculture Exports of the United States*, 1934-35, in the issue of "Foreign Crops and Markets" for October 28, 1935, p. 605 (Vol. 31, No. 18; published by the Foreign Agricultural Service of the bureau of Agricultural Economics of the United States Department of Agriculture):

> "In the post-war years up until 1926-27 the value of agricultural exports accounted for about 45 per cent of the total value of United States exports. At that time non-agricultural exports began to advance more rapidly than did agricultural exports and as a result agriculture's share of total export value was progressively reduced. By the beginning of the depression period in 1929-30, Agriculture accounted for only 32 per cent of all produces exported. This was the smallest share to be recorded since 1916-17, when huge increases in the export of industrial war materials caused a similar reduction in the share of total held by agricultural exports. However, as world depression deepened, exports of industrial materials from the United States declined more rapidly than did those of agricultural products, and the per cent of total exports attributable to agricultural exports grew larger from year to year until it reached 42 per cent in 1932-33. In the following year the percentage declined slightly, due largely to gradual improvement in foreign demand for industrial commodities and to continued low prices for agricultural products. In 1934-35 industrial exports continued their upward trend, *but agricultural exports fell sharply because of the reduction in supplies available for export*, and as a result agriculture's share of total exports declined to 32 per cent, re-establishing the relationship which prevailed at the beginning of the depression." (Italics supplied.)

Exports of Domestic "Basic Agricultural Commodities"[1] Subject to Processing Tax,
(9 months ending September)

	1931		1932		1933	
	Quantity	Value	Quantity	Value	Quantity	Value
Hogs (no.)	561	12,973	1,894	24,329	12,709	121,199
Pork & Products (lbs.)[2]	557,910,043	60,508,733	498,690,644	33,185,673	533,191,412	35,692,200
Corn (bu.)	1,987,921	1,503,344	3,135,557	1,283,683	3,541,115	1,704,868
Wheat (bu.)	51,023,075	33,137,512	46,778,967	28,207,554	3,294,260	1,900,310
Cotton except linters (bales)	3,582,613	193,463,391	5,856,201	226,314,547	5,709,910	250,917,444
Cotton Manufactures	.....	40,117,945	.....	28,595,833	.....	24,864,544
Tobacco (lbs.)	360,204,431	70,791,994	273,032,363	41,315,989	265,923,003	40,723,221
Peanuts (lbs.)	1,426,334	116,735	5,811,875	161,951	1,001,053	45,325
Sugar & related products	.....	5,875,150	.....	3,357,767	.....	3,083,447

[1] Rice and rye are omitted, as the imposition of processing taxes on those commodities is too recent to have had any material effect on
[2] Pork, hams, shoulders, bacon, sides and lard.
[3] "The increase in the wheat exported during 1934 was the result of sales by the North Pacific Emergency Export Association . . . Under t for the difference between prices paid for grain and the world price at which it was sold in the foreign markets. Shipments for export b the period September-December 1934, wheat exports dropped to relatively small quantities." Bureau of Foreign and Domestic Comm (published August, 1935).

Source: U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, "Monthly Summary of Foreign Commerce of t September 1932; September, 1933, 1934 and 1935, respectively.

Imports for Consumption of "Basic Agricultural Commodities"[1] Subject to Processing
(9 months ending September)

	1931[2]		1932[2]		1933	
	Quantity	Value	Quantity	Value	Quantity	Value
Hogs (no.)	76,316	6,480	23,367	2,019	5,803	430
Pork & Products (lbs.)[3]	2,561,709	814,681	4,477,489	835,850	2,385,158	503,939
Corn (bu.)	507,074	273,108	266,506	135,063	95,009	42,708
Wheat (bu.)	40,533	20,272	2,043,724	1,158,355	7,787	4,526
Cotton (lbs.)[4]	50,638,816	5,198,222	55,878,606	5,568,115	54,944,167	5,350,858
Cotton Manufactures[5]	.....	29,022,219	.....	20,197,593	.....	22,727,016
Tobacco (lbs.)[5]	48,262,167	25,095,479	45,561,906	19,106,802	48,052,066	17,822,060
Peanuts (lbs.)	9,214,392	242,734	479,593	10,053	230,679	4,332
Sugar and related products[5]	.....	104,325,982	.....	87,111,964	.....	95,905,194

[1] Rice and rye are omitted, as the imposition of processing taxes on those commodities is too recent to have had any material effect on i
[2] Imports other than for consumption (e.g. for re-export) are eliminated in order to obtain for 1931 and 1932 a basis similar to that us
[3] Pork, hams, shoulders and bacon.
[4] Includes short staple cotton, which is admitted duty free.
[5] Includes imports (duty free) from Philippines and Virgin Islands.

Source: U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, "Monthly Summary of Foreign Commerce of the Unite 1932; September 1933, 1934 and 1935, respectively.

Exports of Domestic "Basic Agricultural Commodities"[1] Subject to Processing Tax, and Derivative Products
(9 months ending September)

1931		1932		1933		1934		1935	
Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
561	12,973	1,894	24,329	12,709	121,199	2,996	43,755	281	10,689
557,910,043	60,503,733	498,690,644	33,185,673	533,191,412	35,692,200	491,003,534	36,977,895	151,211,988	22,478,779
1,987,921	1,503,344	3,135,557	1,283,683	3,541,115	1,704,868	2,442,353	1,802,684	156,447	233,319
51,023,075	33,137,512	46,778,967	28,207,554	3,294,260	1,900,310	16,727,287[3]	10,106,996[3]	155,938	131,784
3,582,613	193,463,391	5,856,201	226,314,547	5,709,910	250,917,444	4,246,300	255,093,153	3,127,960	208,283,032
.....	40,117,945	.....	28,595,833	.....	24,864,544	.....	26,346,322	.....	22,500,640
360,204,431	70,791,994	273,032,363	41,315,989	265,923,003	40,723,221	299,813,219	72,236,381	225,981,669	73,514,514
1,426,334	116,735	5,811,875	161,951	1,001,053	45,325	553,586	36,914	171,983	19,708
.....	5,875,150	.....	3,357,767	.....	3,083,447	.....	4,577,910	.....	6,103,283

the imposition of processing taxes on those commodities is too recent to have had any material effect on exports.
, sides and lard.
xported during 1934 was the result of sales by the North Pacific Emergency Export Association . . . Under the agreement, the United States Government reimbursed the exporters ices paid for grain and the world price at which it was sold in the foreign markets. Shipments for export by the association were practically completed by August 1934, and during ber 1934, wheat exports dropped to relatively small quantities." Bureau of Foreign and Domestic Commerce, "Foreign Trade of the United States, Calendar Year 1934", p. 20

Commerce, Bureau of Foreign and Domestic Commerce, "Monthly Summary of Foreign Commerce of the United States," issues of September, 1931; June, July, August and 1933, 1934 and 1935, respectively.

Imports for Consumption of "Basic Agricultural Commodities"[1] Subject to Processing Tax, and Derivative Products
(9 months ending September)

1931[2]		1932[2]		1933		1934		1935	
Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
76,316	6,480	23,367	2,019	5,803	430	496	45	1,629,230	146,907
2,561,709	814,681	4,477,489	835,850	2,385,158	503,939	1,060,728	338,303	6,784,530	1,308,645
507,074	273,108	266,506	135,063	95,009	42,708	816,694	435,308	34,809,120	16,990,593
40,533	20,272	2,043,724	1,158,355	7,787	4,526	3,336,188	3,406,506	13,446,009	10,166,708
50,638,816	5,198,222	55,878,606	5,568,115	54,944,167	5,350,858	55,748,111	7,328,084	36,353,324	5,150,903
.....	29,022,219	.....	20,197,593	.....	22,727,016	.....	21,801,845	.....	25,307,734
48,262,167	25,095,479	45,561,900	19,106,802	48,052,066	17,822,060	44,389,518	19,391,184	46,201,014	18,524,438
9,214,392	242,734	479,593	10,053	230,679	4,332	248,802	6,055	150,826	6,113
.....	104,325,982	.....	87,111,964	.....	95,905,194	.....	98,674,134	.....	135,858,303

the imposition of processing taxes on those commodities is too recent to have had any material effect on imports.
mption (e.g. for re-export) are eliminated in order to obtain for 1931 and 1932 a basis similar to that used in the official reports for 1933, 1934 and 1935.
con.
which is admitted duty free.
from Philippines and Virgin Islands.
mmerce, Bureau of Foreign and Domestic Commerce, "Monthly Summary of Foreign Commerce of the United States," issues of September 1931; June, July, August and September,

A drastic decline in exports of certain of the agricultural commodities subject to the processing tax has been going on since 1934, and, in some cases, since the latter part of 1933. During 1935 this decrease in exports has been accelerated to such an extent that, as shown in the accompanying tables, increasingly heavy imports have been necessitated in order to take care of the consumption requirements of the United States.

It will be noticed that exports of hogs, corn and wheat have almost reached the vanishing point, after two years of the Agricultural Adjustment Act. The only gains in exports of commodities subject to the processing tax which were not merely temporary were the small increases in the value of the tobacco exported in 1935 (at a sacrifice in *volume* of tobacco exports); and the increase in the value of sugar and related products exported, which was more than offset by the increase in the value of sugar imports. At the same time, the statistics (see tables opposite) show that there has been an extraordinary increase in the last nine months in importations of most of the commodities subject to processing tax.

That this is by no means merely a sudden development, but rather one having its origin near the beginning of the AAA, is shown by the following statement in a pamphlet published in August, 1935, by the Bureau of Foreign and Domestic Commerce, Department of Commerce, and dealing with the foreign trade of the United States during 1934:

> "In sharp contrast to the gains in exports of leading industrial products, *our major export product—raw cotton—dropped 30 per cent in quantity and 6 per cent in value.* The total of approximately 3,149,000,000 pounds of unmanufactured cotton valued at $373,000,000 in 1934 represented the smallest annual quantity exported in more than a decade. Allowing for the normal seasonal changes, the month-to-month de-

cline became accelerated as the year advanced. In the last four months of the year, the season when cotton normally moves in greatest volume, shipments amounted to only 1,169,000,000 pounds, 40 per cent less than in the same months of 1933 *and the smallest quantity shipped in that period of the year since the war year 1918.*"[6] (Italics supplied.)

It is respectfully urged that this matter of fact statement by a government bureau of the effect of the Agricultural Adjustment Act on "our major export product" in the year 1934, is alone sufficient to cast grave doubt on the Government's contention that the Act was "soundly constructed" to aid in restoring general economic activity.[7]

It is evident from the statistics in the tables, that the principle upon which the Agricultural Adjustment Act is based—the principle of scarcity—has resulted in a demoralization of the United States export trade in certain agricultural commodities and an increase in imports of commodities normally produced by American farmers. Not only does this mean competition for such farmers in their home market, but an inevitable loss of foreign markets, where, due to the depletion of the supply of American commodities, they can no longer meet the demand at the

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[6] Department of Commerce, Bureau of Foreign and Domestic Commerce, Trade Promotion Series—No. 162, *Foreign Trade of the United States,—calendar year 1934*, by Grace A. Witherow, Division of Foreign Trade Statistics, p. 19.

[7] See also U. S. Department of Agriculture, Agricultural Adjustment Administration, *Regional Problems in Agricultural Adjustment* (1935), p. 55:

"Unless some means can be devised for regaining the United States export market for wheat; the present drastic limitation of export outlets will continue to complicate the adjustment problem for all wheat, and particularly for those classes in which exports have been most heavily curtailed."

world prices.[8] A concrete example of this situation is furnished by a statement appearing in a report of the Bureau of Agricultural Economics, dated March 14, 1935:

> "Oriental countries which formerly obtained most of their wheat imports from North America, are now taking the bulk of their requirements from the Southern Hemisphere, . . . During the current year shipments to Japan and China have shown a marked increase over those of a year earlier despite relatively large domestic supplies *but more than three-fourths of the shipments are of Australian origin with those from the United States and Canada less than half as large as last season.*"[9]

With respect to cotton, the Government admits (Brief, p. 290) that during 1933, 1934 and 1935 "the cotton production abroad has totaled approximately one million bales in excess of that which it probably would have reached in the absence of stimulation from the higher prices due to the American adjustment programs." The Government's brief seems to minimize the importance of this increase in foreign production of cotton, by comparing it with the reduction of 10,000,000 bales in American cotton during the years 1933-1935.

The importance of the increase in foreign production is not merely in its amount, however. The significant and dangerous point is that the foreign cotton is finding an

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[8] The Bureau of Agricultural Economics, Department of Agriculture, on October 29, 1935 (*World Wheat Prospects*, p. 4), stated that "United States prices continue considerably above export levels, which is to be expected during most, if not all, of the 1935-36 season, supplies of millable hard wheat being less than domestic requirements."

[9] U. S. Dept. of Agriculture, Bureau of Agricultural Economics, Hay, Feed and Seed Division, Market News Service, *Special Wheat Review*, Washington, D. C., March 14, 1935.

increasingly ready market; and while the foreign *consumption of American cotton* is diminishing, the foreign *consumption of foreign cotton* is increasing. And this is true despite the great difficulties to be overcome, and the time and investments required, in bringing new land suitable for cotton under cultivation. The investment having been made in clearing and preparing land, in ginning mills and in cotton-seed oil mills abroad, the foreign competition may now be classed as permanent. The following tabulation will present clearly this shift in consumption of cotton, which, it is submitted, is in large measure attributable directly to the effect of the Agricultural Adjustment Act.[1] The decrease in the consumption of

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[1] "Most of the decline that occurred in the consumption of American cotton from 1933-34 to 1934-35 is accounted for by the decline in consumption in foreign countries as domestic consumption declined only 300,000 bales. A considerable part of the decline in consumption of American occurred in Germany, where the quantity of American cotton consumed was nearly 600,000 bales below the previous season. Smaller consumption of American also occurred in France, Italy, Japan, and a number of other countries. In practically all of these countries, however, the consumption of foreign cotton increased.

"Several factors contributed to the decrease in the consumption of American cotton in 1934-35 relative to the consumption of American cotton in 1933-34 and relative to the consumption of foreign growths of cotton in 1934-35. *One of the most important of these was the relatively high prices of American cotton due in part to reduced supplies of American cotton as a result of the adjustment program* and the drought and to increased supplies of foreign cottons and in part to the 12-cent loan, which in effect further reduced the available market supplies of American cotton." (Italics supplied.) U. S. Department of Agriculture, Bureau of Agricultural Economics, *The Agricultural Outlook for 1935-36*: The Cotton Outlook for 1936, pp. 6-7 (published November 4, 1935).

American cotton is all the more striking in view of the increase in the *total* foreign consumption of cotton in the year 1934-35.

Year	Foreign Consumption of *American* Cotton (bales)	Foreign Consumption of *Foreign* Cotton (bales)	Total Foreign Consumption of *All* Cotton (bales)
Aug. 1, 1932—July 31, 1933	8,167,000	10,049,000	18,216,000
Aug. 1, 1933—July 31, 1934	7,981,000	11,428,000	19,409,000
Aug. 1, 1934—July 31, 1935	6,074,000[2]	14,403,000[2]	20,477,000[2]

[2] Preliminary. Source: U. S. Dept. of Agriculture, Bureau of Agricultural Economics, Report on Acreage, Production, Carryover, Supply and Consumption of Cotton, Tables 3 and 7.

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